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LETTER DATED 12 MARCH 1999 FROM THE PERMANENT REPRESENTATIVE OF ERITREA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to transmit the attached document entitled "Issues raised by the Eritrean side requesting clarification", containing the written clarifications by the Organization of African Unity (OAU) High-level Delegation at the heads of State level to the questions submitted by the State of Eritrea on the OAU proposals for a Framework Agreement for a peaceful settlement of the dispute between Eritrea and Ethiopia (see annex).

Eritrea submitted its questions for clarification to the OAU High-level Delegation on 12 December 1998, prior to the meeting of the OAU Central Organ, and received these written clarifications on 26 January 1999. Eritrea was studying these clarifications to give its considered response to the OAU High-level Delegation when the process was cut short by Ethiopia's launch of its all-out offensive on 6 February 1999.

I wish to draw the attention of the Security Council to the clarity of the answers from the OAU regarding:

(a) The question of what constitutes the "environs" of Badme under paragraph 1 (b);

(b) OAU's answer to the Ethiopian interpretation of what Badme and "environs" means under paragraph 1 (c);

(c) The issue of redeployment throughout the remaining border under paragraph 2 (c).

I understand that the Ethiopian Government had, through its Permanent Representative to the United Nations, requested that this same document (Issues raised by the Eritrean side requesting clarification), be circulated as a document of the Security Council about three weeks ago during the Presidency of Canada. As the Ethiopian Government raised no questions about the clarifications then, such a measure would indicate that the Ethiopian Government was in agreement with the clarifications provided in the document. In fact, that is the only way Ethiopia could be consistent with its alleged full

acceptance of the OAU Framework Agreement. Ethiopia's attempts to misinterpret and revise the Framework now could only indicate its design to continue to use force against Eritrean sovereignty.

I should be grateful if you would kindly circulate the present letter and its annex as a document of the Security Council.

(Signed) Haile MENKERIOS
Ambassador
Permanent Representative

Annex

Note verbale dated 26 January 1999 from the General Secretariat of the Organization of African Unity transmitting the document entitled "Issues raised by the Eritrean side requesting clarification" to the Embassy of Eritrea in Addis Ababa

The General Secretariat of the Organization of African Unity (OAU) presents its compliments to the Embassy of the State of Eritrea in Addis Ababa and has the honour to refer to the questions for clarification handed over by Isaias Afwerki, President of the State of Eritrea, to Salim Ahmed Salim, Secretary-General of OAU, during the latter's visit to Asmara on 12 December 1998, which were subsequently forwarded to the members of the OAU High-level Delegation on the dispute between Ethiopia and Eritrea.

The General Secretariat wishes to attach herewith, a document, containing the answers of the OAU High-level Delegation at heads of State level to the questions asked by the Eritrean side and requests the esteemed Embassy to transmit the same to Isaias Afwerki, President of the State of Eritrea.

Enclosure

Issues raised by the Eritrean side requiring clarification

1. Regarding Badme and environs

(a) On the coordinates of Badme and its location relative to the recognized boundary?

The OAU High-level Delegation addressed the issue of the administration of Badme. The issue of the coordinates of Badme was not raised. This is a technical matter which could be addressed during the implementation of the Framework Agreement.

(b) What is meant by environs? Which areas does it include?

Environs refers to the area surrounding Badme town.

(c) According to Ethiopia, "Badme and environs" means "all Ethiopian border territories occupied by Eritrea since 6 May 1998, what is the OAU's view?

See paragraph 36 in the report on the efforts of the OAU High-level Delegation, presented to the Fourth Ordinary Session of the Central Organ, meeting at heads of State level, which states: "the High-level Delegation took note of the position of Prime Minister Meles Zenawi. There was, however, no further discussion on the issue".

(d) Has Ethiopia submitted to OAU the totality of its claims as had been repeatedly requested by Eritrea?

Ethiopia has indicated that it will submit its claims when the issues of delimitation, demarcation and, if need be, arbitration are addressed.

2. Regarding redeployment

(a) What is the justification for unilateral Eritrean redeployment from Badme?

The OAU High-level Delegation came to the conclusion that Badme town and its environs were administered by Ethiopia prior to the events of 6 to 12 May 1998. Therefore, the troops to be redeployed are those that occupied the area from 6 to 12 May 1998.

(b) Why redeployment to positions before 6 May? Where precisely are the positions?

The incidents that took between 6 and 12 May are the fundamental issues that brought the dispute to the attention of OAU and the international community. The precise location of these positions are to be identified by technical experts during the implementation stages of the Framework Agreement with the cooperation of the two parties.

(c) What does "the redeployment to be extended within the framework of demilitarization" mean? Whose redeployment is it?

The redeployment is of Eritrean troops from Badme town and its environs. This should be immediately followed by the demilitarization of the entire border, through the redeployment of the forces of both parties along the entire border, to positions to be determined subsequently, as part of the implementation process of the Framework Agreement.

3. Regarding civilian administration

(a) What is the justification for "reinstated civilian administration" if the areas under consideration are Eritrean with an Eritrean population?

This is based on the conclusions of the OAU High-level Delegation on the administration of the areas concerned prior to 6 May 1998 and not on the population. This position is without prejudice to the final status of the areas concerned which will be determined after the processes of delimitation, demarcation and, if need be, arbitration, have been concluded.

(b) What is the rationale for setting up an alien administration for a short time when options exist for quick demarcation?

The administration referred to is not a new one; it is the one that was there prior to 6 May 1998. The High-level Delegation is of the view that this measure will contribute towards defusing tension and paving the way for the implementation of the other aspects of the Framework Agreement.

4. Regarding investigation

(a) What is the purpose of "an investigation on the incidents of July and August 1997 and 6 May 1998 and all incidents in between", if it has no bearing on the settlement of the dispute?

The High-level Delegation is of the view that such an investigation has a bearing on a lasting settlement of the dispute. It will provide further clarity on those events, and allow OAU to appreciate the problem in all its dimensions. In the meantime, the recommendations on redeployment and demilitarization are aimed at creating an enabling environment for the processes of delimitation, demarcation and arbitration.

(b) Why are the incidents that occurred on 6 May and that escalated through a series of spiralling clashes until 12 May not seen as one integral act of violation? Moreover, why is 6 May 1998 seen as central? Why not July 1997?

See response in 2 (b).

5. Regarding colonial treaties

(a) Has OAU ascertained that both sides recognize and respect the colonial boundary between the two countries as defined by the established colonial treaties?

This is a fundamental principle of OAU which all OAU member States have accepted. This principle is therefore reflected in the proposals submitted by the OAU High-level Delegation to both parties. The OAU takes it that by accepting these proposals and eventually by signing the Framework Agreement, which contains this principle, the two parties would have committed themselves to abide by this principle.

(b) If this is the case, can this be affirmed through an agreement between the two parties?

This principle is part and parcel of the Framework Agreement.

(c) What is the meaning of the clause "international law applicable to the colonial treaties"?

International law means laws that govern the relations between States. In this particular case, international law would refer to the specific aspects of international law relevant to the colonial treaties.

(d) What is the precise interpretation of the Charters of OAU and the United Nations concerning colonial treaties?

As far as OAU is concerned, it is to be noted that its Charter refers to the principle of territorial integrity of its member States. This position was further elaborated in the well-known resolution AHG/Res. 16 (1), adopted at the OAU Summit in Cairo in July 1964, which provided in its operative paragraphs as follows:

"Solemnly reaffirms the strict respect by all Member States of the Organization for the principles laid down in paragraph 3 of Article III of the Charter of the Organization of African Unity;

"Solemnly declares that all Member States pledge themselves to respect the borders existing on their achievement of national independence".

6. Regarding demarcation

(a) What is the legal basis for demarcation?

The signing of the Framework Agreement by the two parties.

(b) What are its modalities, mechanism and time-frame?

The time-frame is six months, to be extended as provided for in the Framework Agreement (on the recommendation of the cartographic experts).

The modalities and mechanism to be worked out by the follow-up committee, in consultation with the exports.

(c) What are the legal arrangements that will render the outcome binding?

Same response as in 6 (a).

7. Principle of the non-use of force and intimidation

(a) Has the Committee attempted to ascertain which party has used force as a means of imposing a solution?

This will be determined by the investigations to be carried out as a part of the comprehensive settlement plan.

(b) Has the Committee tried to ascertain which party resorted to force in the July 1997 incident at Adi Murug, the January 1998 incident on the Assab road and the May incidents in Badme?

The July 1997 and the May 1998 incidents will be the subject of the proposed investigation. The January 1998 incident is new to OAU, but could be covered by the investigation as proposed in the Framework Agreement where reference is made to the need to investigate other incidents that may have contributed to the present dispute.

(c) What is the position of the committee regarding the resolution of Ethiopia's Parliament, on 13 May 1998, declaring war against Eritrea?

The Committee has refrained from making any judgement on statements by the Governments and institutions in both countries. It has consistently appealed to both parties to exercise restraint and refrain from any actions and decisions which could harm the relations between the two sisterly countries and their peoples.

On the rest of the clarifications sought under item 7, the Committee considered its role to be one of offering good offices to both parties and urging them to exercise maximum restraint, as well as to opt for a peaceful settlement of their dispute.

8. Regarding the principle of a peaceful solution to disputes

(a) Which party has been routinely rejecting a peaceful solution?

Both parties have consistently expressed to the OAU High-level Delegation their commitment to a peaceful settlement of the current dispute.

(b) Is unconditional cessation of hostilities acceptable to both sides?

The OAU High-level Delegation did not address the issue of unconditional cessation of hostilities. It has taken the issue of cessation of hostilities within the context of the Framework Agreement submitted to both sides. In fact, the cessation of hostilities is contained in the first operative paragraph of the Framework Agreement.

9. Regarding the violation of basic human rights of citizens

(a) Has the Committee taken stock of the basic violations committed and property illegally confiscated?

See the relevant paragraph in the introductory note handed over to both parties by the Ministerial Committee in Ouagadougou (1 and 2 August 1998) which stated, inter alia, "As regards the situation of Eritreans in Ethiopia ... However, the conditions in which those deportations were carried out, the decision to extent those measures to families of the deported persons and the fate of their properties are a source of deep concern".

(b) What will be the role of OAU in ensuring that these violations are redressed?

OAU, with the cooperation of both parties and with the assistance of the United Nations and other relevant institutions, will help the parties to address all aspects of the dispute, including the humanitarian problems generated by the dispute.

10. Regarding the Central Organ of OAU

(a) What is the mandate of the Central Organ?

See the 1993 Cairo Declaration of the OAU Summit establishing the Mechanism for Conflict Prevention, Management and Resolution.

(b) What can we expect from the forthcoming meeting of the Central Organ?

See the communiqué adopted by the Central Organ at the end of its deliberations.